

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LAWRENCE M. BECKER, as fiduciary  
of the Xerox Corporation Savings Plan  
and Xerox Corporation Retirement  
Income Guarantee Plan,

Plaintiff,

v.

CARMEN STEPHANIE MAYS-  
WILLIAMS, et al.,

Defendants.

CASE NO. C11-5830 BHS

ORDER GRANTING  
DEFENDANT'S DISCOVERY  
MOTION

This matter comes before the Court on Defendant Carmen Stephanie Mays-Williams's ("Mays-Williams") motion for relief from case schedule, to compel, and for discovery sanctions (Dkt. 67). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On April 28, 2015, the Court issued a scheduling order setting August 24, 2015 as the deadline for discovery motions and September 21, 2015 as the discovery deadline.

Dkt. 61.

1 On August 28, 2015, Mays-Williams sent Defendant Asa Williams, Jr.'s ("Asa  
2 Jr.") counsel a notice of deposition scheduling a deposition for September 11, 2015. Dkt.  
3 68-2. Initially the parties worked toward a mutually acceptable date for the deposition.  
4 See Dkt. 68-4. Mays-Williams sent notice of the deposition of Asa Jr. to his counsel for a  
5 September 11, 2015 deposition date to accommodate the August vacation schedule and  
6 prior work commitments of Asa Jr.'s counsel. However, Asa Jr.'s counsel refused to  
7 have his client attend any deposition based on Washington's deadman statute. Dkt. 68-5.

8 On September 21, 2015, Mays-Williams filed the instant motion requesting relief  
9 from the Court's deadlines, an order to compel the deposition of Asa Jr., and for  
10 sanctions. Dkt. 67. On October 5, 2015, Asa Jr. responded. Dkt. 71. On October 9,  
11 2015, Mays-Williams replied. Dkt. 74.

## 12 II. DISCUSSION

13 A party may depose any other party without leave of court, and attendance may be  
14 compelled by subpoena. Fed. R. Civ. P. 30(a). A party's failure to appear for a  
15 deposition is sanctionable conduct that can, in extreme circumstances, result in dismissal  
16 of the party failing to attend. Fed. R. Civ. P. 37(d). In other words, failure to attend a  
17 properly noted deposition is inexcusable absent sufficient cause.

18 In this case, it is undisputed that Asa Jr. failed to attend a deposition that was  
19 compelled by subpoena. Although Asa Jr. argues that the deposition was somehow not  
20 timely, Mays-Williams served the notice before the Court's discovery deadline. Now,  
21 Asa Jr. defends this motion asserting that, though the discovery deadline was September  
22 21, 2015 (after the scheduled deposition date), the discovery *motion* deadline had expired

1 on August 24, 2015. This conduct raises doubt as to Asa Jr.'s counsel's good faith when  
2 it appears that counsel for Mays-Williams was willing to accommodate the schedule of  
3 Asa Jr.'s counsel. Instead, Asa Jr. objected to the deposition not only because Mays-  
4 Williams missed the deadline for a discovery motion, but also because he argues that  
5 there can be no relevant evidence gained from Asa Jr.'s deposition. This later argument  
6 is completely without merit. Asa Jr.'s other arguments in support of his failure to attend  
7 are also without merit. Therefore, the Court grants Mays-Williams's motion to compel  
8 and defers ruling on sanctions against Asa Jr.'s counsel. If there are any further  
9 unjustified positions taken by him, the Court will revisit this request.

### 10 **III. ORDER**

11 Therefore, it is hereby **ORDERED** that Mays-Williams's motion for relief from  
12 case schedule, to compel, and for discovery sanctions (Dkt. 67) is **GRANTED in part**  
13 and **DENIED in part** as stated herein.

14 Dated this 3rd day of November, 2015.

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17 **BENJAMIN H. SETTLE**  
United States District Judge